IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 43 OF 1999.

1. Smt. Maria Greta Soares
   e Matos Sequeira,
   d/o Antonio Lactancio
   Soares and her husband:

2. Mr. Agnelo Leonel Caetano
   de Matos Sequeira, landlord,
   major of age, both resident
   of House No. 38, Sodorwado,
   Ponda, Goa. ... Appellants.

VERSUS

1. Shri Aleixo Caetano Colaco,
   alias Caetano Colaco,
   married, major of age,
   landlord, son of Camilo
   Colaco (since deceased),
   through legal heirs of
   deceased plaintiff No.1.

   a) Hermina Colaco,
      d/o late Aleixo Colaco.

   b) Mr. Louzario Colaco,
      s/o late Aleixo Colaco.

   c) Maria Magdalina Colaco,
      major of age, d/o late
      Aleixo Colaco, all
      resident of Cumborda,
      Verna, Salcete, Goa.

2. Smt. Candolina Augusta
   Colaco, major in age,
   d/o late Pedrina Fernandes,
   housewife, r/o Cumborda,
   Verna, Salcete, Goa. ... Respondents.

Shri V. P. Thali, Advocate for the Appellants.

Respondents absent.

CORAM: N.A. BRITTO, J.

DATE: 10TH JUNE, 2004.

ORAL JUDGMENT:

This appeal was admitted on the following substantial question of law:-

" Whether under section 34 of the C.P.C. it is permissible for the appellate court to grant interest at the rate of 12% to the respondent from the date of receipt of land acquisition compensation by the appellant (i.e. 17.11.86) till the date of realisation. "

2. Some facts need be stated to answer the said question. The appellants herein were the defendants in R.C.S. No.101/89. The plaintiffs in the said suit had claimed that they had purchased two properties namely "Varzea Pasqualem" having Survey No. 5/15 and "Pasqualem" having Survey No. 335/2 both of Verna village. A portion of the said properties was subsequently acquired by the Government, but the L.A.O. paid to the defendants the compensation payable thereon on 19.6.86 in the sum of Rs.18,523.60. The plaintiffs claimed that they approached the defendants, after they came to know about the said acquisition and the receipt of compensation by them, and though the defendants initially promised to pay, subsequently declined to

pay the same and both the plaintiffs sent a notice to the defendants which was received by them on 8.6.88 and since the said compensation was not paid by the defendants to the plaintiffs, the plaintiffs filed the suit to recover the same on 2.5.89 which came to be decreed by the learned Civil Judge, Junior Division, Margao for the sum of Rs.18,523.60. Although the plaintiffs in the said Civil Suit had prayed for the said sum along with interest at the rate of 12% per year from the date of receipt of the said compensation by the defendants (defendant No.1), the learned Civil Judge refused to award any interest to the plaintiffs without any reason.

The plaintiffs filed an appeal against the same, bearing R.C.A. No.45/98 and the learned Addl. District Judge, Margao who heard and decided the appeal allowed the same and directed the defendants to pay interest on the said principal sum of Rs.18,523.60 at the rate of 12% from the date of receipt of the said compensation by the defendant No.1. In other words, it can be seen from the judgment of the learned Addl. District Judge dated 14.8.1998 that the learned Addl. District Judge awarded pre-suit, pendente lite and future interest to the plaintiffs at a flat rate of

12%.

4. The plaintiffs/respondents have chosen to remain absent at the hearing of the present appeal.

5. As regards pre-suit interest, Shri Thali, the learned counsel of the defendants has submitted that no interest could have been ordered to be paid at the rate of 12%. Referring to Section 3 of the Interest Act, 1978 (Act, for short), Shri Thali has submitted that if at all any interest was payable, it was at the rate of 10% and that too from the date of notice only in terms of Section 3(1)(b) of the Act.

Section 3(1) of the Act provides that :-

> " (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, -
>
> (a) if the proceedings relate to a debt payable

> by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;
>
> (b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings; "

(The remaining portion of Section 3 is not relevant in the case at hand).

6. At this stage Section 34, C.P.C. could also be reproduced with advantage. Section 34, C.P.C. reads as follows:-

> " 34. Interest -
> (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, [with further interest at such rate not exceeding six per cent. per annum, as the Court deems reasonable on such

> principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit: "

7. In the case of **U.P. Co-operative Federation Ltd. v. M/s. Three Circles** (2000 (3) Bom. C.R. 360**)** a Division Bench of this Court observed that it was of the view that, as far as pre-reference period was concerned, i.e. the period prior to 1st March 1989, the arbitrator had no power to award interest at a rate higher than the current rate of interest. The Division Bench further observed that the parties are agreed that the maximum rate permitted by the Reserve Bank of India on public deposits during the period 1987-89 was 10% p.a. The Division Bench therefore proceeded to hold that the interest awarded in excess of 10% for the period 1987-89 was in excess of jurisdiction and contrary to law. This decision of the Division Bench came to be followed in the case of **Oil & Natural Gas Commission v. Macqreqor-Navire Port Equipment & others** (2002 (1) Bom. C.R. 278) and it was observed by this Court that this Court in the case of **U.P. Co-operative Federation Ltd.** (supra) had recognis**ed** that the current rate of interest for the period 1987-89 on public deposits was 10% and therefore the arbitrator could not have

awarded interest of more than 10%.

8. As seen from Section 3 of the Act a court or arbitrator has an option to award interest at any rate but not exceeding the current rate of interest. In other words, it appears that the rate at which interest ought to be awarded is in the discretion of the court, but the prohibition is that it should not exceed the current rate of interest. It has been submitted by Shri Thali that what was the current rate of interest, was the burden which the plaintiffs had to discharge and the plaintiffs had placed no material before the court as regards to what was the current rate of interest for the relevant period. In my opinion, in the light of Section 3 of the Act, the learned Addl. District Judge could not have awarded pre-suit interest from the date defendant no.1 had received the said money, but had to restrict the period to the date of service of notice by the plaintiffs on the defendants i.e. on 8.6.1988. In other words, the plaintiffs would be entitled to receive interest from the defendants not from the date defendant no.1 received the compensation, but from the date (8.6.88) on which the plaintiffs served a written notice on the defendants as required by Section 3(1)(b) of the Act. Since this

court has now accepted that the said interest for the said period ought to be 10%, I am inclined to follow suit and award to the plaintiffs pre-suit interest at the rate of 10% from 8.6.88 to 2.5.89.

9. Coming to pendente lite interest, it is the submission of Shri Thali, the learned counsel of the defendants that the court ought not to exceed 6% and in support of this submission, Shri Thali has placed reliance on the case of **Mahabir Prasad Rungta v. Durga Datta** (A.I.R. 1961 S.C. 990). In this case the Hon'ble Supreme Court observed that interest for the period prior to commencement of a suit is claimable either under an agreement, or usage of trade or under a statutory provision or under the Interest Act, for a sum certain where notice is given. The Apex Court further observed that as regards interest pendente lite until the date of realisation, such interest was within the discretion of the Court. It was further observed that the rate fixed is 6 per cent, which, in the circumstances and according to the practice of Courts, appears high. The Apex Court therefore proceeded to award interest at 4 per cent per annum instead of 6 per cent and further proceeded to modify the decree accordingly.

10. Reliance has been placed by Shri Thali also on the case of **Amar Chand Butail v. Union of India and others** (A.I.R. 1964 S.C. 1658). This was a case where the Apex Court directed interest to be paid at 4 per cent per annum from the date of the suit until payment is made, that being the rate at which future interest was usually allowed. As seen from Section 34, C.P.C. the grant of pendente lite interest is in the discretion of the court and the court is entitled to grant interest as it deems reasonable to be paid on the principal sum adjudged. Both the decisions cited on behalf of the defendants are rather very old and since then the rates of interest have fluctuated on either side of the scale. Since I have awarded pre-suit interest to the plaintiffs at the rate of 10%, in my opinion it is reasonable that the plaintiffs should be awarded pendente lite interest at the same rate i.e. at 10% from 2.5.89 till 27.4.98.

11. Lastly, coming to post-decree future interest, there can be no doubt that Section 34, as already seen, provides that future interest has got to be paid at such rate not exceeding 6% per annum as the court deems reasonable. In other words, future interest cannot exceed 6 per cent in terms

of section 34, C.P.C. The plaintiffs therefore would be entitled to receive future interest from the date of the decree only at the rate of 6%.

12. Consequently the appeal deserves to succeed partly. As a result, the plaintiffs would be entitled to receive from the defendants interest at the rate of 10% from 8.6.88 to 27.2.98 and future interest from the date of decree until payment at the rate of 6 per cent. Decree to be drawn accordingly.

N.A. BRITTO, J.

sl.